In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 579

ST. LUKE'S HOSPITAL ASSOCIATION OF CLEVELAND, OHIO, OF THE METHODIST CHURCH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 31-45) is reported at 333 F. 2d 157. The opinion of the district court (Pet. 13-31) is reported at 212 F. Supp. 387.

JURISDICTION

The judgment of the court of appeals (Pet. 55) was entered June 18, 1964. The petition for a writ

of certiorari was filed October 12, 1964, pursuant to an extension of time previously granted by Mr. Justice Stewart. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTION PRESENTED

Whether the provisions of Section 1426(b) (14) of the Internal Revenue Code of 1939 and Section 3121 (b) (13) of the Internal Revenue Code of 1954, excluding from "employment" with respect to which the federal social security tax is imposed "service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law," may be extended also to exclude from "employment" with respect to which the tax is imposed services performed as a resident physician in the employ of such hospital by an individual who has completed an approved internship and is taking further in-hospital medical training in an approved medical specialty program conducted by such hospital.

STATUTES INVOLVED

Sections 1426(b) (14) of the Internal Revenue Code of 1939 and Section 3121(b) (13) of the Internal Revenue Code of 1954 are set out in the Appendix, *infra*, pp. 7-9.

STATEMENT

This action was brought in the District Court for the Northern District of Ohio, by St. Luke's Hospital

Association of Cleveland, Ohio to recover sums paid as taxes (both employer's contributions and employee's contributions) under the Federal Insurance Contributions Act.[1] (R. 4a-8a).[2] The facts were stipulated in part by the parties in the district court (R. 11a-13a), supplemented by documentary exhibits and oral testimony introduced at the trial.

The taxpayer, a non-profit corporation, operates a general hospital in Cleveland, Ohio, with a program of in-hospital training for medical school graduates complying with the standards established by the Council on Medical Education and Hospitals of the American Medical Association. All medical school graduates in training at St. Luke's Hospital during the relevant periods had previously completed a four-years' course in a medical school chartered or approved pursuant to State law. The taxpayer filed employment tax returns under the Federal Insurance Contributions Act for the period in dispute—January 1, 1953, through June 30, 1958—but did not include in such returns any amounts on account of compensation paid to medical school graduates taking in-hospital training under programs operated by the Hospital. The District Director assessed additional F.I.C.A. taxes, both employer's contributions and em-

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[1] Internal Revenue Code of 1939, Secs. 1400, *et seq.*, and Internal Revenue Code of 1954, Secs. 3101, *et seq.*, derived from Title VIII, Sec. 801, *et seq.*, of the Social Security Act, c. 531, 49 Stat. 620, 636, as amended.

[2] Record references herein are to the printed pages of the Appendix to the brief filed by the United States, defendant appellant, in the Court of Appeals.

ployee's contributions, against the taxpayer in the sum of $16,722.42 for the quarters involved, based upon amounts paid to medical school graduates who had completed internship and were taking further in-hospital training in certain specialty programs conducted by the Hospital. The assessments did not include amounts paid to medical school graduates taking their regular one-year internship after graduation because Section 1426(b) (14) of the Internal Revenue Code of 1939 and Section 3121(b) (13) of the Internal Revenue Code of 1954 specifically exclude from the tax "service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law."

In its refund claim and in this suit (both before the district court and the court of appeals), the taxpayer contended, first, that medical school graduates who had completed their internship and were taking further in-hospital training under some medical specialty program conducted by the Hospital were also excluded from coverage by the provision excluding interns, and, secondly, that such medical school graduates were not employees of the Hospital and the amounts which the taxpayer calls stipends or subsistence allowances were not "wages" within the meaning of the respective statutes. The district court held that the medical school graduates who were taking further in-hospital training after completing their internship were employees of the Hospital, but it gave judgment for the taxpayer on the ground that they

were interns within the meaning of the statute, and the United States appealed. The court of appeals agreed with the district court that the medical school graduates taking advanced in-hospital training were employees of the Hospital. It reversed the judgment of the district court, however, holding that the provisions of the respective statutes excluding hospital interns from social security coverage does not also exclude those medical school graduates who have completed their hospital internship and are taking further in-hospital training in a medical specialty.

ARGUMENT

The decision below presents no question which warrants review by this Court. The petition for a writ of certiorari does not deny that the medical school graduates serving on the staff of St. Luke's Hospital who had completed their internship and were taking further in-hospital training under specialty programs conducted by the Hospital were employees, or that the compensation paid them constituted "wages" within the meaning of the applicable statutes. The only issue presented by the petition is whether such residents are excluded from coverage of the Social Security Act and the Federal Insurance Contributions Act tax by the provisions of the statute excluding "interns" from such coverage. The question has limited importance, there are no conflicting decisions, and the ruling below is clearly correct.

The provisions excluding hospital interns and nurses in training from coverage of the Social Se-

curity Act and the corresponding social security tax were first enacted in the Social Security Act Amendments of 1939, c. 666, 53 Stat. 1360, Sec. 606. As exemption provisions, they may not be extended beyond the clear import of the language used. The exception was enacted for the benefit of student nurses and medical school graduates completing their basic medical education and the hospitals in which they take their internship training, and the term "intern" was then, as now, fully understood by those for whose benefit it was enacted. It plainly was not meant to include those whom the profession characterizes as "residents" and the attempt to stretch it so far is without foundation.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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NOVEMBER, 1964

APPENDIX

Internal Revenue Code of 1939 (26 U.S.C., 1952 ed.):

SEC. 1426. DEFINITIONS.

When used in this subchapter—

* * * *

(b) [As amended by Sec. 204(a) of the Social Security Act Amendments of 1950, c. 809, 64 Stat. 477] EMPLOYMENT—The term "employment" means any service performed after 1936 and prior to 1951 which was employment for the purposes of this subchapter under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 either (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States as an employee for an American employer (as defined in subsection (i) of this section); except that, in the case of service performed after 1950, such term shall not include—

* * * *

(14) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;

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Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 3121. DEFINITIONS.

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(b) Employment.—For purposes of this chapter, the term "employment" means any service performed after 1936 and prior to 1955 which was employment for purposes of subchapter A of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1954 either (a) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States

by a citizen of the United States as an employee for an American employer (as defined in subsection (h)); except that, in the case of service performed after 1954, such term shall not include—

* * * *

(13) [As amended by Sec. 205 (b) of the Social Security Amendments of 1954, c. 1206, 68 Stat. 1052]

Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

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